Cambridge University Press et al v. Patton et al
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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA,
ATLANTA DIVISION

CAMBRIDGE UNIVERSITY PRESS, et al., Plaintiffs, – *vs.* – MARK P. BECKER, in his official capacity as Georgia State University President, et al Defendants.	Civil Action No. 1:08-CV-1425-ODE

DECLARATION OF STEVEN M. SHEFFRIN IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, Steven M. Sheffrin, declare under penalty of perjury that the following is true and correct:

1. Attached as Exhibit 1 to this Declaration is a copy of the Expert Report of Steven M. Sheffrin In Response to the Report of Kenneth D. Crews, dated October 15, 2009. The opinions addressed in that report are my own, and they and other information contained in the report are true and correct to the best of my knowledge, with one exception: Since the creation of the report, I have moved

from U.C. Davis to Tulane University. I am now the Executive Director of the Murphy Institute and Professor of Economics at Tulane.

Steven Sheffrin

Dated: February 22, 2010

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA,
ATLANTA DIVISION

CAMBRIDGE UNIVERSITY PRESS, OXFORD UNIVERSITY PRESS, INC., and SAGE PUBLICATIONS, INC., Plaintiffs, - *v.* - MARK P. BECKER, in his official capacity as Georgia State University President, et al., Defendants.	Civil Action No. 1:08-CV-1425-ODE

EXPERT REPORT OF STEVEN M. SHEFFRIN IN RESPONSE TO THE REPORT OF KENNETH D. CREWS

I. BACKGROUND

My name is Steven M. Sheffrin, and I am a Professor of Economics at the University of California, Davis. I joined the UC Davis faculty in 1976 and served as the Chair of the Department of Economics from 1983 to 1990, and the Dean of the Division of Social Sciences from 1998 to 2008. I am currently the Director of the UC Davis Center for State and Local Taxation. I have authored ten books and monographs and more than a hundred articles in macroeconomics, public finance, and international economics. These publications include the book *Rational Expectations*, which is in its second edition and is published by

Cambridge University Press; *Property Taxes and Tax Revolts: The Legacy of Proposition 13,* also published by Cambridge; and an introductory economics textbook that is now in its sixth edition with Prentice Hall. I received my B.A. in Economics from Wesleyan University in 1972, and my Ph.D. from the Massachusetts Institute of Technology in 1976. A copy of my curriculum vitae is attached to this report as Exhibit 1.

I have served as an expert witness on matters related to state corporate taxation. In the last four years, I testified in *Macy's Dept. Stores, Inc. v. City and County of San Francisco,* 143 Cal. App. 4th 1444 (2006). I am not being paid or receiving any other consideration for preparing this report.

Located west of Sacramento, California, UC Davis is a large state university of more than 30,000 students and part of the extensive University of California system. UC Davis is one of 62 leading public and private research institutions that comprise the Association of American Universities.

As Dean of the Division of Social Sciences, I supervised approximately 240 faculty members in 10 major departments, including the departments of history, sociology, economics, and political science, among others, and administered a budget of $24 million. In the performance of my duties, I have been involved in hundreds of decisions regarding the hiring of new faculty members and the offer of tenure to existing faculty members. I was personally involved in the hiring of approximately 130 new faculty members and the promotion of approximately 100 existing faculty from assistant professor to associate professor, or from associate professor to full professor.

II. OPINIONS

I understand Dr. Kenneth D. Crews in his Expert Report in this case has made reference to the "changing state of education, publishing, technology and the law" and has asserted that higher education "will likely remain in steady transition." Based on the changes he identifies, he claims that the doctrine of "fair use" under the copyright law should be interpreted "flexibly" to encompass the distribution of materials to students via new technologies like E-Reserves systems. He further suggests that "E-Reserve systems commonly serve the interests of copyright owners." (See pp. 2, 9-10)

It is my view that whatever structural and technological changes may arise in the academy, including new mechanisms for the delivery of course reading materials, a healthy educational publishing industry is and will remain vital to the academy and to individual scholars. The efficiencies to be gained by digital distribution of materials to students – such as those heralded by Dr. Crews – should not come at the expense of the publishers whose materials are being distributed. To the extent professors – whether at GSU or elsewhere – give away for free that which was previously purchased or licensed, and to the extent that activity jeopardizes the ability of publishers to continue to publish scholarly work, universities stand to lose more than they gain. What follows explains the basis for these assertions – in particular the myriad contributions of publishers to the academic enterprise that must be taken into account.

The most obvious contribution of publishers to the life of a university is in publishing the course reading material that lies at the heart of the educational experience. Reading materials assigned by the professor are an essential part of virtually all university classes. Without the works of the Plaintiffs in this suit and other publishers of scholarly and educational material – thousands of which I understand are being used in GSU classes – the learning experience would be dramatically impoverished.

I know from my own experience as an author for Cambridge University Press that publishers devote tremendous resources and time to identifying and selecting the works that merit publication, working with the author throughout the editorial process to develop a manuscript into a finished work suitable for publication, and financing the printing, distribution, and marketing of the work. These efforts are essential to the production of quality academic texts and are thus of great importance to teaching itself. Regrettably, they must now be undertaken in the face of uncertain sales and, even worse, uncompensated copying and distribution.

In addition, publishers play a vital role in supporting the hiring and promotion process at universities. Publishing companies, including the Plaintiffs in this case, serve a crucial credentialing function that impacts directly on the determination as to whether many professors will ultimately receive tenure. Tenure decisions are almost always predicated on an individual candidate's publication of books and articles through reputable publishers. Indeed, in many fields, including history and other social sciences (where book-length studies, as distinguished from single articles in journals, are the norm) it is, in my experience, nearly impossible for a professor to obtain tenure without having published a significant book.

The hiring/tenure process at UC Davis generally works as follows. At the time a new assistant professor is hired following his or her Ph. D. studies, he or she will have ordinarily completed a dissertation that encompasses a substantial body of research, but one not sufficiently refined or developed to be published as an academic book. We will generally bring three to four candidates for an open position to campus, where they will give a "job talk" presenting their dissertation research. In addition to this on-campus process, the dean and hiring committee will also consider letters from the candidate's graduate advisor and others.

In order to achieve publication of the dissertation (and thus eventually be eligible for tenure), a young assistant professor will submit his or her dissertation for consideration by scholarly publishers. If a publisher chooses to publish the professor, the publisher will work closely with the professor in developing and polishing the research project – similar to what I described above with my own experience with Cambridge University Press – so that it adheres to the highest standards of the particular academic discipline in which the professor specializes. Prior to publication, the publisher will oversee a rigorous peer review process, which involves the evaluation of the work by other experts in the field.

When it comes time to consider the assistant professor for promotion to a tenured position – usually 6 to 7 years after being hired – the process is extremely rigorous, with the candidate's publications (including the dissertation that the candidate has subsequently developed into a book) playing a central role. Under the procedures followed at Davis, the department assembles a dossier containing, among other elements, copies of the candidate's published works, teaching evaluations, and – most important – five to eight external reviews of the candidate's primary publications. These reviews are solicited from experts in the candidate's field, who are sent copies of the candidate's book and asked to review it. (In certain fields, such as economics, it is more common for leading scholarship to be published in peer-reviewed journals rather than in full book form, but the process is essentially the same.)

Because many of the professors and administrators on the committee responsible for tenure decisions come from outside of the candidate's specific academic niche and are often unfamiliar with all of the intricacies of the candidate's particular field of research, they must rely on the assessment of these experts in order to cast an informed vote. These experts are necessarily more knowledgeable about the specialty in question and are thus able to provide a more informed opinion. And it is the candidate's published work – which the publisher will have played an extensive role in developing into book form – that forms the basis of the outside reviewers' evaluation of the candidate.

From the employer university's perspective, the publisher's role in choosing, developing, and evaluating the work is critically important to the determination of whether to extend an offer of tenure to the professor. Those responsible for the tenure decision rely on the imprimatur of the publishing houses as indicative of the high quality of a given candidate's body of work and her potential to publish additional research. Indeed, under the UC Davis faculty promotion guidelines, the first factor reviewers are instructed to consider in reviewing a candidate's published work is the "Venue where work is published; *i.e.*, high quality, peer-reviewed journals, and highly respected presses for books."

I recall in more than one tenure case that the department waited until they had received final word that a manuscript had been accepted by a reputable press. In one case I recall specifically it was Cambridge University Press. The acceptance played a key role in the department's decision to recommend tenure for the individual.

Publishers are thus directly involved in the processes by which professors gain access to vital pedagogical tools (in the form of quality academic texts) and receive employment and tenure. If the livelihood of such organizations were put at risk, or their output significantly diminished, in addition to the loss of educational content, colleges' and universities' ability to make important personnel decisions would be severely constrained, and professors as well as students would lose out.

The bottom line, from a pedagogical standpoint, is that the copyrighted materials published by the plaintiffs in this lawsuit and myriad other reputable publishers are fundamental to the educational enterprise. Were institutions of higher education routinely to adopt the position that it is unduly "costly" for their students either to purchase full texts of these materials or pay the requested permissions fees for access to portions of them, the result would be calamitous both for the publishing community as well as for colleges and universities.

III. MATERIALS CONSIDERED

I reviewed the following materials in preparing this Report:

- Amended Complaint, *Cambridge University Press, et al. v. Patton, et al.*, Civil Action No. 1:08-CV-1425-ODE
- Expert Report of Kenneth D. Crews

Dated: October 15, 2009

Steven M. Sheffrin, Ph. D.

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STEVEN M. SHEFFRIN

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ACADEMIC LEADERSHIP EXPERIENCE

Professor of Economics 1985-present

Dean, Division of Social Sciences, College of Letters and Science, University of California Davis , 1998-2008

- Provided academic and strategic leadership for 254 faculty FTE in 10 major departments, 8 interdisciplinary programs, 4 centers, and serving over 6000 majors. Oversee and administer a budget of $24 million.
- Worked with faculty and staff to develop innovative interdisciplinary programs including a Center for Mind and Brain and Middle Eastern and South Asian Studies.
- Provided leadership for divisional fundraising and institutional advancement. Provided oversight for the Undergraduate and Education Office within the College of Letters and Science. Collaborate with senior leadership on College and University-wide affairs.

Director, Center for State and Local Taxation, UC Davis, 1991-present

- Founded the Center in 1991 in collaboration with the Franchise Tax Board and the Board of Equalization.
- As director, lead the Center's educational and outreach programs, including a yearly Summer Tax Institute, and other public policy forums. Conduct and coordinate research on tax policy and state fiscal affairs.

Chair, Department of Economics, UC Davis, 1983-90

EDUCATION

Massachusetts Institute of Technology - Ph.D., 1976

College of Social Studies, Wesleyan University - BA, Magna Cum Laude with honors, 1972

HONORS, SCHOLARSHIPS AND FELLOWSHIPS

Brookings Economic Policy Fellowship, 1980-1981

Danforth Fellowship, 1972-1976

Junior Fellow, Center for Humanities, Wesleyan, 1972

Hallowell Prize in Social Science, 1972

Thomas Mayer Distinguished Teaching Award, 1995

OTHER ACADEMIC POSITIONS

Acting Director, Institute of Governmental Affairs, 1997-1998

Adjunct Fellow, Public Policy Institute of California, 1995-1997

Faculty Fellow, Lincoln Institute of Land Policy, 1996-

Visiting Professor, Nuffield College, Oxford, September 1995-December 1995

Visiting Professor, London School of Economics, January 1991-June 1991

Visiting Professor, Princeton University, January 1988-June 1988

Financial Economist, Office of Tax Analysis, U.S. Treasury, 1980-1981

Member, Editorial Board, Economic Inquiry, 1992-1997

Member, Fiscal Task Force for the California Business Higher Education Forum, 1993-1994 (responsible for formulating and drafting the taxation portion of the Action Plan on fiscal reform for the Forum)

PUBLICATIONS

Books and Monographs

Rational Expectations, Cambridge University Press, 1983, Second Edition 1996. Translations in French, Spanish, and Japanese.

Property Taxes and Tax Revolts: The Legacy of Proposition 13, (with Arthur O'Sullivan and Terri A. Sexton), Cambridge Press, 1995. Paperback reissued 2007.

Markets and Majorities, Free Press, 1993.

The Making of Economic Policy: History, Theory and Politics, Basil Blackwell, 1989. Translation in Japanese.

Economics: Principles and Tools, (with Arthur O' Sullivan), Prentice Hall, 1998, Fifth Edition 2007. Also Canadian and Portuguese editions.

Economics Principles in Action, (with Arthur O' Sullivan), Prentice Hall, 2001. Third Edition, 2005

Proposition 13 in Recession and Recovery, (with Terry A. Sexton), Public Policy Institute of California, 1998.

Who Pays for Development Fees and Exactions? (with Marla Dresch), Public Policy Institute of California, 1997.

Fiscal and Monetary Policy, edited volume with Introduction (with Thomas Mayer), Edward Elgar, 1995.

Monetarism and the Methodology of Economics, edited volume with Introduction and "Tom Mayer: An Appreciation," (with Kevin Hoover), Edward Elgar, 1995.

Macroeconomic Theory and Policy, (with David Wilton and David Prescott), South Western, 1987.

Instructor Manual for Macroeconomics, Dornbusch and Fischer, McGraw Hill, 1977.

Selected Articles

"Fairness in Market Value Taxation," in R. Bahl, J. Martinez, J. Youngman ed., What Role for Property Taxes, Cambridge, MA.: Lincoln Institute of Land Policy, forthcoming 2009.

"Re-Thinking the Fairness of Proposition 13," in Jack Citrin, ed., Proposition 13 at 30, Berkeley, CA: Berkeley Public Policy Press, forthcoming 2009.

"Tax Tensions: Privatization and Local Finance," (with Bei Li) in Privatizing China, ed. L. Zhang and A. Ong, Cornell University Press, 2008.

"Understanding Surveys of Taxpayer Honesty," (with Janine L.F. Wilson), Finanzarchiv, 2005

"State Budget Deficit Dynamics and the California Debacle," Journal of Economic Perspectives, 2005

"Complexity and Compliance: An Empirical Investigation," (with Adam Forest), National Tax Journal, 2002

"Interest Rates, Exchange Rates and Present Value Models of the Current Account," (with Paul Bergin), The Economic Journal, 2000.

"Tax Reforms and the Growth of Government," Empirical Economics, 1999. Reprinted in ed. Robin Boadway and Baldev Raj, Advances in Public Economics, 2000.

"Proposition 13: Unintended Effects and Feasible Reforms," (with Terri A. Sexton and Arthur O' Sullivan), National Tax Journal, 1999.

"Spotting Sunspots: Some Evidence in Support of Models with Self-fulfilling Prophecies," (with Kevin D. Salyer), Journal of Monetary Economics, 42, 1998.

"Reform During Crisis: The Transformation of California's Tax System During the Great Depression," (with James Hartley and J. David Vasche), Journal of Economic History, September 1996.

"What Does the Public Believe About Tax Fairness?" National Tax Journal, 1993.

"Causation, Spending, and Taxes: Sand in the Sandbox or Tax Collector for the Welfare State? (with Kevin Hoover), American Economic Review, 1992.

"Some Evidence in Favor of a Monetary Rational Expectations Exchange Rate Model with Imperfect Capital Substitutability," (with Robert Driskill and Nelson Mark), International Economic Review, 1992.

"Present Value Tests of an Intertemporal Model of the Current Account," (with Wing T. Woo), Journal of International Economics, 1990.

"Have Economic Fluctuations Been Dampened? Evidence Outside the United States," Journal of Monetary Economics, January 1988.

"Consumption and Unemployment," (with Mark Dynarski), Quarterly Journal of Economics, May 1987.

"Is Price Flexibility Destabilizing?" (with Robert Driskill), American Economic Review, September 1986.

"The 'Patman Effect' and Stabilization Policy," (with Robert Driskill), Quarterly Journal of Economics, February 1985.

"The Dispersion Hypothesis and Macroeconomics," Review of Economics and Statistics, August 1984.

"Housing Purchases and Transitory Income: A Study with Panel Data," (with Mark Dynarski), Review of Economics and Statistics, May 1985.

"Testing the Rational Expectations Hypothesis in an Agricultural Market," (with Thomas Goodwin), Review of Economics and Statistics, November 1982.

"Unanticipated Money Growth and Output Fluctuations," Economic Inquiry, January 1979.

"Estimating the Tax Advantage of Corporate Debt," (with Joseph Cordes), Journal of Finance, March 1983.

Other Articles

I have published over 100 articles or book chapters in macroeconomics, public finance, labor and other fields in economics A full list of publications is available on request.

Published Public Policy Reports

The Market Value of Commercial Real Estate in Los Angeles County (with Terri Sexton), California Policy Research Center, Berkeley, 2003 and reprinted in *State Tax Notes*;

Estimating the Tax Burden in California (with Marla Dresch), California Policy Seminar: Berkeley, 1995

The Future of Proposition 13 in California (with Arthur O'Sullivan and Terri Sexton), California Policy Seminar: Berkeley, 1993 (with Data Appendix)

"Equity and Efficiency in the California Tax System," (with Terri Sexton) in California Fiscal Reform: A Plan for Action, California Business Higher Education Forum, June 1994

SELECTED PROFESSIONAL AND PUBLIC AFFAIRS LECTURES (SINCE 1985)
University Lectures and Professional Conferences

All-UC Group in Economic History
American Economic Association, Annual Meetings
American Political Science Association, Annual Meetings
Australian National University
Bank of England
Bath University
Boise State University
California State University, Hayward
California State University, Sacramento
Cambridge University
Carnegie-Mellon University
Centre of Asian Studies, the University of Hong Kong
Claremont University
Federal Reserve Bank of San Francisco
India Statistical Institute
Indira Gandhi Institute of Development Research, India
Institute of Economics, Copenhagen
International Institute of Public Finance:
Berlin, Tel Aviv, Kyoto, Argentina, Spain, Austria, Prague, Milan
Kon-Kuk University, Korea
Korean Institute of Public Finance
Lincoln Institute of Land Policy
London School of Economics
National Tax Association, Annual Meetings and Spring Symposium

NBER Summer Institute
New York University
Oxford University
Portland State University
Princeton University
Purdue University
Shanghai Institute of Social Science
Seoul Women's University
Southampton University
Stanford University
UC Berkeley
UC Irvine
UC Los Angeles
UC Riverside
UC Santa Cruz
University College, Dublin
University of New Mexico
University of Oregon
University of New South Wales, School of Taxation
University of Santa Clara
Wesleyan University
Western Illinois University
World Econometric Congresses: MIT, Barcelona

Public Affairs Lectures

California Tax Policy Seminar
Controllers Conference on Tax Reform
Executive Forum
International Association of Assessment Officers
Northern California Assessors Association
Santa Clara Manufacturing Group
Senate Fiscal Retreat
Tax Executives Institute
UC Budget Forum
UC Berkeley Birch Center
UC Davis Executive Program
UC Davis Fulbright Scholars
UCLA Forecasting Conference
Western States Tax Association of Tax Administrators

Graduate Student Supervision

Students	Initial Placements
Alden, Lorraine	California State University, Sacramento
Al-Qudsi, Sulayman	Kuwait University
Benson, Charles Jr.	Idaho State University
Berger, George	Indiana State University
Duquette, Christopher	IRS Research Department
Elwood, Kirk	James Madison University
Forest, Adam	Syracuse University
Goodwin, Thomas	University of New Mexico
Haase, Charles	California State University, San Francisco
Hartley, James	Mt. Holyoke College
Khandke, Khailash	Middlebury College
Lim, Ewe-Gee	IMF
Lopus, Jane	California State University, Hayward
McNamara, Ronald	Bentley College
Movassagh, Nahid	California Energy Commission
Pangestu, Mari	Centre for Strategic and International Studies, Indonesia; currently Indonesian Minister of Trade
Turner, Tracy	Kansas State University
Van Hoomissen, Theresa	Carleton College
Wajid, Khalid	Bank of America (Research Department)
Zanini, Gianni	World Bank
Xu, Xiaonian	Amherst College